

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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ALBERT BETEMIT,

Petitioner,

9:05-CV-0309

vs.

T.R. CRAIG,

Respondent.

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U. S. DISTRICT COURT
N. D. OF N. Y.
FILED

APPEARANCES:

MAY - 4 2005

ALBERT BETEMIT
Petitioner, pro se
33807-083
FCI Ray Brook
P.O. Box 9004
Ray Brook, NY 12977

AT _____ O'CLOCK _____ M
LAWRENCE K. BAERMAN, Clerk
UTICA

DAVID N. HURD
United States District Judge

ORDER

By Decision and Order filed April 14, 2005, the petition for habeas corpus relief filed by petitioner Albert Betemit was dismissed for failure to state a claim upon which habeas corpus relief could be granted. Dkt. No. 4. The petitioner has appealed that dismissal to the United States Court of Appeals for the Second Circuit. Dkt. No. 6.

Presently before the Court is the petitioner's request for a certificate of appealability ("COA"). Dkt. No. 6.

Appeals to the Court of Appeals in habeas corpus proceedings are governed by 28 U.S.C. § 2253, which provides in relevant part that:

- (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –
(A) the final order in a habeas corpus proceeding in which the detention

complained of arises out of process issued by a State court; or
(B) the final order in a proceeding under section 2255.¹

A COA may only be issued "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

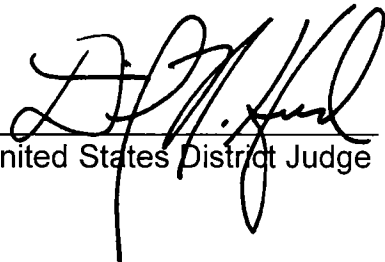
After reviewing the file, and for the reasons set forth in the Court's prior Decision and Order in this action, the Court finds that the petitioner has failed to make the showing required for issuance of a COA. Therefore, the Court denies his request.

WHEREFORE, it is hereby

ORDERED, that the petitioner's application for a certificate of appealability (Dkt. No. 6) is denied, and it is further

ORDERED, that the Clerk serve a copy of this Order on the petitioner.

IT IS SO ORDERED.


United States District Judge

Dated: May 4, 2005
Utica, New York.

¹ Rule 22 of the Federal Rules of Appellate Procedure also provides that an appeal may not proceed "unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c)." Fed.R.App.P. 22(b).